

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 December 2022

**Public Authority:** Ministry of Defence  
**Address:** Whitehall  
London  
SW1A 2HB

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the Defence Infrastructure Organisation (Ministry of Defence) relating to offences committed concerning particular military Byelaws. The Ministry of Defence ("the MOD") refused the request under section 14(1) of FOIA (vexatious request).
  2. The Commissioner's decision is that the request was vexatious and therefore the MOD was entitled to rely upon section 14(1) of FOIA to refuse it.
  3. The Commissioner does not require any steps to be taken as a result of this decision notice.
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## Request and response

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4. On 13 December 2021, the complainant made the following request for information:

"I am interested in finding out the following information:

Number of arrests.

Number of convictions.

Offence and applicable Byelaw section for each arrest and any subsequent conviction.

And if recorded:

Approximate location.

Month/year.

For offences committed in the scope of the following Byelaws:

Aldershot and District Military Lands Byelaws (1976).

Ash Ranges Byelaws (1983).

Longmoor Ranges and Demolition Training Area (1982).

Within the following dates:

Records held from 1st Jan 2015 to date of this FOI.

Records held from 1st Jan 2010 to 31st Dec 2015.

Records held from 1st Jan 2000 to 31st Dec 2010.

Should the above scope see the cost of response rise above accepted limits then later data/information is of higher priority than older records, and the additional information of location and date may be limited/omitted accordingly.

Please note personal data - names etc - and any case considered subjudice is specifically out of scope of this request and such information is specifically not requested nor sought.

Please note conviction of an offence is a matter of public record."

5. On 14 January 2022, the MOD responded that the request was being refused because it was vexatious under section 14(1) of FOIA.
6. The complainant requested an internal review on 14 January 2022. The MOD upheld its decision via internal review on 13 April 2022 and advised that it was also engaging section 17(6) of FOIA.

## Scope of the case

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7. The complainant contacted the Commissioner on 22 March 2022 to complain about the way their request for information had been handled. They dispute that the request is vexatious.
8. This notice covers whether the MOD correctly determined that the request was vexatious.

## Reasons for decision

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### Section 14(1) – vexatious requests

9. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
10. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)<sup>1</sup> states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress.
11. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
12. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
13. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)<sup>2</sup>. Although the case was subsequently appealed to the

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<sup>1</sup> <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.

14. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
15. The four broad themes considered by the Upper Tribunal in Dransfield were:
  - the burden (on the public authority and its staff);
  - the motive (of the requester);
  - the value or serious purpose (of the request); and
  - any harassment or distress (of and to staff).
16. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. They stated:

“all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

### **The MOD's view**

17. The MOD has said that before making their request of 13 December 2022, the complainant had, only a few hours earlier, received a response to a very similar request which had been refused under sections 30(3) and 40(5) of FOIA. The MOD stated that it appeared that the complainant had refined the request in such a manner to explicitly exclude personal information from its scope and felt that this was likely an attempt to remove the MOD's ability to engage the exemption at section 40(5).
18. The MOD explained that as the refined request did not effectively change the scope of the original request, it considered whether it could be refused as repeated under section 14(2). However, it determined that in line with the ICO's guidance on section 14 it should not take this approach on this occasion. The MOD has noted that submitting repeated requests where the position is likely to remain unchanged is considered an indication of vexatious behaviour.
19. The MOD provided a list of the 33 requests that the complainant has submitted between July 2020 and 13 December 2021, 31 of which relate

in some way to public access to military lands in the Aldershot area or the review of the Aldershot Byelaws. The MOD explained that the complainant's requests often relate back to previous requests, or have been submitted with minor changes to the wording of a previous request to change the scope of the original information requested. The requests, which have more often than not resulted in the release of information, have impacted significantly upon the work of at least two business areas within the Defence Infrastructure Organisation (DIO).

20. The MOD has stated that the effort required to sustain the handling of these requests has taken resource from other core business tasks, including maintaining the security and safety of MOD land, and the ongoing review of the MOD Byelaws, as well as meeting the demand of information requests from other requesters.
21. The MOD explained that it has also had to process a number of internal reviews, Ministerial Correspondence and Treat Official requests from the same individual. Overall, the DIO has expended a significant amount of time and effort in handling the complainant's requests, complaints and related issues through a number of different regimes, which often overlap in the information being requested or released.
22. The MOD has explained that the need to deal with the same or similar questions repeatedly, the volume and frequency of the complainant's correspondence, which sometimes mixes requests with unsupported accusations and complaints, have a harassing effect on staff because it is impacting on the same individuals and business areas within DIO.
23. The MOD added that it is aware that the complainant is a member of a campaign group that regularly makes similar requests to the DIO and has made accusations about staff members via its website.

### **The Commissioner's decision**

24. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA.

### **The value of the request**

25. The Commissioner acknowledges that the subject matter may be of public interest.
26. He accepts that, by seeking transparency and accountability, a request will have value or serious purpose.

### **The negative impacts of the request - burden, motive, and harassment**

27. The Commissioner acknowledges that the MOD considers that the motive of the requester is to cause undue disruption.
28. The Commissioner has reviewed the other requests made by the complainant, referred to by the MOD. He notes the frequency of the requests and that the majority of the requests follow a similar theme.
29. The Commissioner notes the MOD's view that the complainant is clearly dissatisfied with the level of public access to specific military training grounds, and whilst there is a right to access to official information, it is evident that they have persisted in using FOIA legislation and other regimes as part of a concerted campaign.
30. He considers that, in the circumstances of this case, this lessens the value of the request and supports the argument that the request is vexatious.

### **Balancing the value of the request against the negative impacts**

31. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.
32. He has also considered, in light of the nature, and degree, of the dealings between the complainant and the MOD, whether, at the time, the request crossed the threshold of what was reasonable.
33. The purpose of section 14 of FOIA is to protect public authorities and their employees in their everyday business. In his guidance, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
34. Having balanced the purpose and value of the request against the detrimental effect on the MOD, the Commissioner is satisfied that the request was not an appropriate use of FOIA procedure.
35. The Commissioner considers that the request was vexatious and therefore the MOD was entitled to rely on section 14(1) of FOIA to refuse the request.

## Right of appeal

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36. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**